

BILL ANALYSIS

Senate Research Center
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S.B. 1268
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In its November 2020 report, the Texas Sunset Advisory Commission (Sunset) highlighted concerns with the Texas Commission on Law Enforcement (TCOLE) that Sunset believes limits the agency's effectiveness in performing its duties.

TCOLE is the state's licensing agency for Texas peace officers, law enforcement agencies, county jailers, and school marshals, but most glaringly in the case of peace officers and law enforcement agencies (LEA), has little authority to discipline or sanction them.

Within the current scope of its regulatory authority, TCOLE is empowered to revoke the license of a peace officer only following a criminal conviction or deferred adjudication disposition. TCOLE cannot discipline officers for lapses in judgment or breaches of professional standards or for in general, no longer being fit to serve or remain licensed as a peace officer. By statute, disciplinary and enforcement authority related to officer conduct resides with LEAs.

Current statutes also limit TCOLE's ability to accurately report cases of officer misconduct so that it is noted on the officer's license, unless it rises to the level of criminality. TCOLE's current regulatory parameters do not allow reports of officer misconduct or disciplinary actions to be attached to the officer's license until an officer separates from an LEA for any reason. At that time, a separation report is generated that could potentially follow a licensee to another LEA. The employing agency is responsible for preparing and submitting the separation report (F-5) to TCOLE.

Under the existing system that has been in place since 1995, all separations from employment between an officer and an LEA must fit into three categories: honorable, general, or dishonorable. In its report, Sunset stated that those categories may not accurately account for an officer's conduct and may be negotiated between the LEA and officer or be influenced by the LEA's administrator. A dishonorable or general discharge must be defended by the LEA. If the LEA does not appear, there is an automatic upgrade to the next category or higher by the hearing officer (SOAH).

Other problems with the current F-5 system is that even when a dishonorable discharge is upheld, over the past five years, at least 25 percent of licensees have been hired by other LEAs. TCOLE however, has the ability to revoke the license of an officer who has received two dishonorable discharges. But Sunset reports that of 2,800 notices of discharge issued by TCOLE over the past five years, only nine licenses were finally revoked.

S.B. 1268 would—

Repeal the three discharge categories of honorable, general, and dishonorable now under the F-5 system used to report the separation of an officer from a LEA;

Reference an officer's departure from an LEA as the officer's separation, deleting the terms resigned, retired, and terminated;

Indicate in a termination report that replaces the F-5 if a license holder was suspected of misconduct, regardless of whether the officer was terminated for the misconduct;

Expand the definition of misconduct to include criminal conduct by a licensee, regardless of whether the officer was charged, arrested, or convicted of an offense; and

Allow an officer who is the subject of a termination report to contest a charge of misconduct. If the allegation of misconduct is not upheld by the hearing officer, TCOLE would be required to remove the allegation from the licensee's termination report and send the corrected report to the appropriate LEA.

As proposed, S.B. 1268 amends current law relating to an employment termination report and other records submitted to the Texas Commission on Law Enforcement by a law enforcement agency.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Law Enforcement is rescinded in SECTION 4 (Section 1701.452, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1701.451(c), Occupations Code, as follows:

(c) Deletes existing text requiring the Texas Commission on Law Enforcement (TCOLE) employee having the responsibility to maintain any employment termination report regarding the person who is the subject of the preemployment request for employment termination report to release the report to a law enforcement agency.

SECTION 2. Amends Sections 1701.452(a), (b), (d), and (g), Occupations Code, as follows:

(a) Deletes existing text requiring the head of a law enforcement agency or the head's designee to submit a report to TCOLE on a form prescribed by TCOLE regarding a person licensed under Chapter 1701 (Law Enforcement Officers) who resigns or retires from employment with the law enforcement agency or whose appointment with the law enforcement agency is terminated. Makes conforming and nonsubstantive changes.

(b) Requires the head of a law enforcement agency or the head's designee to indicate in the report required under Subsection (a) whether the license holder was suspected of misconduct, regardless of whether the license holder was terminated for misconduct. Defines "misconduct." Deletes existing text requiring the head of a law enforcement agency or the head's designee to include in the report required under Subsection (a) a statement on whether the license holder was honorably discharged, generally discharged, or dishonorably discharged and, as required by TCOLE, an explanation of the circumstances under which the person resigned, retired, or was terminated. Deletes existing text defining "honorably discharged," "generally discharged," and "dishonorably discharged."

(d) Makes conforming changes to this subsection.

SECTION 3. Amends Sections 1701.4525(a), (d), and (e), Occupations Code, as follows:

(a) Authorizes a person who is the subject of an employment termination report maintained by TCOLE under Subchapter J (Employment Records) to contest an indication under Section 1701.452(b) that the person was suspected of misconduct, rather than to contest information, contained in the report by submitting to the law enforcement agency and to TCOLE a written petition on a form prescribed by TCOLE for a correction of the report not later than the 30th day after the date the person receives a copy of the report.

(d) Provides that a proceeding to contest an indication of misconduct, rather than to contest information, in an employment termination report is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

(e) Requires an administrative law judge, in a proceeding to contest an indication of misconduct in an employment termination report, to determine if the alleged misconduct occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated for the misconduct. Deletes existing text requiring an administrative law judge, in a proceeding to contest information in an employment termination report for a report based on alleged misconduct, to determine if the alleged misconduct occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated or the person resigned, retired, or separated in lieu of termination.

SECTION 4. (1) Repealer: Section 1701.452(c) (relating to authorizing TCOLE by rule to further specify the circumstances that constitute honorably discharged, dishonorably discharged, and generally discharged), Occupations Code.

(2) Repealer: Section 1701.4521 (License Suspension for Officer Dishonorably Discharged), Occupations Code.

(3) Repealer: Section 1701.454 (Confidentiality), Occupations Code.

SECTION 5. Requires TCOLE, not later than December 1, 2021, to update the form for an employment termination report as necessary to comply with Section 1701.452, Occupations Code, as amended by this Act.

SECTION 6. Provides that the changes in law made by this Act apply only to a report required to be submitted under Section 1701.452, Occupations Code, as amended by this Act, regarding a separation of a license holder that occurs on or after December 1, 2021. Provides that a separation that occurs before December 1, 2021, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 7. Effective date: September 1, 2021.